

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

RICHARD D. MURRAY, SR.,

Petitioner,

v.

**Civil Action No. 3:06cv51
(Judge Stamp)**

**CLERK RORY L. PERRY,
COMMISSIONER JAMES RUBENSTEIN
AND WARDEN MARK WILLIAMSON,**

Respondent.

**REPORT AND RECOMMENDATION ON RESPONDENT'S
MOTION TO DISMISS AS MOOT**

This case was initiated on May 26, 2006, by the filing of a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody. On July 18, 2006, the Respondent filed a Motion to Dismiss Petition for Failure to Exhaust State Remedies. On September 27, 2006, Petitioner filed a response to the Respondent's Motion to Dismiss.

On February 22, 2007, the undersigned issued a Report and Recommendation in which it was recommended that the Respondent's motion to dismiss for failure to exhaust be denied and Petitioner's § 2254 petition be stayed so he may pursue his state remedies. However, on March 2, 2007, the Respondent filed a Motion to Dismiss as Moot. In the motion, the Respondent asserts that Petitioner died on February 7, 2007, and that it is no longer possible for this Court to grant Petitioner the relief requested in this matter. Thus, the Respondent seeks the dismissal of this case with prejudice as moot.

In light of the death of Petitioner, the undersigned agrees that it is no longer possible for this Court to grant Petitioner the relief sought in the petition. Accordingly, it is recommended that the

Respondent's Motion to Dismiss as Moot (dckt. 26) be GRANTED and this case be DISMISSED with prejudice.

Within ten (10) days after being served with a copy of this recommendation, any party may file with the Clerk of Court written objections identifying those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections shall also be submitted to the Honorable Frederick P. Stamp, Jr., United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to mail a copy of this Report and Recommendation to the *pro se* petitioner.

Dated: March 6, 2007.

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE